

Fresno, California

March 7, 2006

The City Council met in regular session at the hour of 8:30 a.m. in the Council Chamber, City Hall, on the day above written.

Present:	Tom Boyajian	Councilmember
	Brian Calhoun	Councilmember
	Mike Dages	Councilmember
	Henry Perea	Acting President
	Cynthia Sterling	Councilmember
	Larry Westerlund	Councilmember
	Jerry Duncan	Council President

Andy Souza, Assistant City Manager
Jon Ruiz, Assistant City Manager
Bruce Rudd, Interim Assistant City Manager
Hilda Cantu Montoy, City Attorney
Becky Klisch, City Clerk
Cindy Bruer, Deputy City Clerk

Pastor G.L. Johnson of the Peoples Church gave the invocation and Acting President Perea led the Pledge of Allegiance.

***ADD-ON* SPCA PET OF THE MONTH - COUNCILMEMBER BOYAJIAN**

The pet of the month available for adoption, a two month old gray kitten, was presented.

PROCLAMATION OF "QUALITY COLLEGE OF CULINARY CAREERS DAY" - COUNCILMEMBER WESTERLUND

Read and presented.

***ADD-ON* PROCLAMATION - "HILDA CANTU MONTOY DAY" - COUNCILMEMBER CALHOUN**

Read and presented. Councilmember Boyajian presented City Attorney Montoy with a plaque. Several Councilmembers commended Ms. Montoy for her hard work and dedication to the City and in turn Ms. Montoy thanked Council, and the City Attorney staff for their fine service to the community.

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APPROVE MINUTES OF FEBRUARY 28, 2006:

On motion of Councilmember Dages, seconded by Councilmember Westerlund, duly carried, RESOLVED, the minutes of February 28, 2006, approved as submitted.

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COUNCIL MEMBER REPORTS AND COMMENTS:

Councilmember Boyajian requested an update on the finances relating to the increase in the City's property taxes prior to the budget session with City Manager Souza stating a tray memo was distributed but the item would be placed on the March 28th agenda for discussion.

Acting President Perea noted that during the Oscar presentation on television, the designer got his inspiration for the Oscar sign from the Tower Theater sign as he was driving through Fresno to Los Angeles.

Councilmember Westerlund thanked the County of Fresno for putting together the "Big Read" over the past weekend, and added he brought grapefruit for Mr. Echols, a gentleman who presented Council with grapefruit at the February 28th Council meeting.

Councilmember Calhoun stated he rides a City bus on a frequent basis and gets off at Mariposa Mall and expressed concern with the inappropriateness of the number of homeless people sleeping on benches in that area. Councilmember Calhoun also questioned the status of the dog ordinance stating his office had received several telephone calls and stressed the importance of setting a date to receive the information.

Councilmember Sterling questioned the status of the report relating to American All-Risk Loss Administrators (ARLA), a Workers Compensation Carrier, and City Manager Souza stated the report would be provided to Council this afternoon.

Councilmember Dages questioned the enforcement of the trash containers "in view" ordinance and expressed concern with providing the residents with a rule book and not a citation book with City Manager Souza concurring.

Council President Duncan commended the opening of a new business in District 6 and invited people to attend the grand opening of Cigar Masfino on March 8, 2006 at Cedar and Alluvial.

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APPROVE AGENDA:

Council President Duncan requested the Council meeting of May 23, 2006 be canceled due to several Councilmembers being out of town and City Manager Souza requested meeting with the City Clerk to reschedule some meeting dates since the May 23rd meeting would be during the middle of the budget process. Council President Duncan stated the rescheduling of the meeting would be addressed at the next Council meeting.

On motion of Councilmember Westerlund, seconded by Acting President Perea, duly carried, RESOLVED, the **AGENDA** hereby approved, by the following vote:

Ayes :	Boyajian, Calhoun, Dages, Perea, Sterling, Westerlund, Duncan
Noes :	None
Absent :	None

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ADOPT CONSENT CALENDAR:

Gloria Torrez, Fresno CA., stated she did not consider the consent calendar items to be routine and public comment should be allowed and each item voted upon separately. Ms. Torrez stated the money relating to 1C should be used for sheltering the homeless and the poor. Ms. Torrez discussed 1D and stated she attended the dedication in the year 2002 for State Route 99, and expressed concern with the project not being completed. Ms. Torrez stated she spoke with Governor Gray Davis and his staff and asked for \$350,000 to reinstate frequencies to Line 38 and clean air diesel buses. Ms. Torrez stated the City was given money for State Route 99 and noted neither requests were completed and noted the City had not been good stewards with the City's money.

(1-A) RESOLUTION NO. 2006-83 - 65TH AMENDMENT TO AAR 2005-286 APPROPRIATING \$40,000 IN THE FY 06 BUDGET FOR THE WEED AND SEED SOUTHEAST GRANT PROGRAM

(1-B) APPROVE APPOINTMENT OF LONNIE SCHARDT TO THE BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE - COUNCILMEMBER CALHOUN; AND APPOINTMENTS OF ANTHONY MARTINEZ AND REBECCA JOHNSON TO THE ROOSEVELT IMPLEMENTATION COMMITTEE - COUNCILMEMBER DAGES

(1-C) RESOLUTION NO. 2006-84 - APPROVING THE APPLICATION FOR, AND ACCEPTANCE OF, CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WORKFORCE HOUSING REWARD GRANT FUNDS IN THE AMOUNT OF \$715,000, AND AUTHORIZING THE EXECUTION OF PROGRAM DOCUMENTS

(1-D) CONSIDER RESOLUTION AND LETTER OF SUPPORT TO RETAIN FUNDING FOR STATE ROUTE 99
1. RESOLUTION NO. 2006-85 - SUPPORTING THE RETENTION OF \$1 BILLION EARMARKED FOR STATE ROUTE 99

(1-E) RESOLUTION NO. 2006-86 -INTENT TO ANNEX FINAL TRACT MAP NO. 5357 TO CFD NO, 11, ANNEXATION NO. 1, AND SETTING THE REQUIRED PUBLIC HEARING FOR MARCH 28, 2006

(1-F) RESOLUTION NO. 2006-87 - INTENT TO ANNEX FINAL TRACT MAP NO. 5338 TO CFD NO. 11, ANNEXATION NO. 4, AND SETTING THE REQUIRED PUBLIC HEARING FOR MARCH 28, 2006

On motion of Councilmember Westerlund, seconded by Acting President Perea, duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Perea, Sterling, Westerlund, Duncan
Noes : None
Absent : None

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(3-B) RESOLUTION NO. 2006-88 - SUPPORTING THE ACQUISITION AND ASSIGNMENT OF F-15C EAGLE FIGHTER AIRCRAFT FOR THE 144TH FIGHTER WING FOR DEFENSE OF THE SOUTHWESTERN CONTINENTAL UNITED STATES - COUNCILMEMBER WESTERLUND

Councilmember Westerlund gave a brief background of the item, and stated the Base Re-Alignment and Closure Commission process concluded September, 2005, where the City was to receive twenty-four F-16C Block 30's and an amendment was recently made to send the F-15's to the Montana Air National Guards and he felt the aircraft should be returned to Fresno. Councilmember Westerlund stated the City was still going to receive 18 of the 24 F16's but as of this date there was not a follow-on aircraft plan for the 144th Fighter Wing to carry the City past the year 2012. Councilmember Westerlund requested Council support the above listed resolution allowing the City to have a follow-on aircraft plan that would carry the City past the year 2012. Councilmember Westerlund noted he would be leaving for Washington this afternoon to lobby for the resolution, and stated several politicians were currently circulating a letter to adopt the resolution.

Councilmember Boyajian commended Councilmember Westerlund for his proactive move in protecting the Airport as well as jobs and the economy.

On motion of Councilmember Westerlund, seconded by Councilmember Boyajian, duly carried, RESOLVED, the above entitled Resolution No. 2006-88 hereby adopted, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Perea, Sterling, Westerlund, Duncan
Noes : None
Absent : None

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(3-A) REQUEST FOR UPDATE FROM THE PUBLIC WORKS DIRECTOR ON THE STATUS AND COMPLETION TIME LINE FOR THE HERNDON AVENUE CONSTRUCTION PROJECT - COUNCILMEMBER CALHOUN

Councilmember Calhoun expressed concern with the delay of the completion of the construction on Herndon Avenue and stated he was unhappy with the construction company as well as City staff. Councilmember Calhoun stated the media was helpful in providing an explanation of the situation to the public, but stated the residents of the City have a right to speak to Council or at least hear from Council. Councilmember Calhoun has received several questions from the public and in turn he distributed to staff and read the following list:

1. When did the City find out the project was behind schedule?
2. Why was the project behind schedule?
3. How long did it take for the contractor to get up to speed after being found negligent?
4. Is the contractor now fully staffed to get the job done?
5. Why wasn't the contractor fired and replaced, particularly since he failed with the "No Neighborhood Left Behind" contract?
6. When was the Council notified of this delay?
7. How long had staff known about it before Council was notified about it?
8. What fines have been levied against the contractor to date?
9. Have we removed him from the contractor list?
10. What actions are being taken to keep this from happening again?

Public Works Director Healey stated the project would not be completed until approximately May, 2006, and noted the completion date should have been September, 2005. Mr. Healey gave an extensive history of the project, and stated the contractor was not fired because he was providing traffic safety and the City of Fresno was not equipped to handle such a large project; Mr. Healey stated the Public Works Department has been working with the City Manager's Office and the City Attorney's Office to

prevent similar situations, and stated as of March 6, 2006, liquidated damages of \$71,000 have been assessed against the construction company and an assessment of \$500.00 per day will continue until the project has been completed. **(2-0)** Mr. Healey stated the City was looking into other options to prevent the same situation from happening in the future.

Councilmember Calhoun expressed concern with the six month delay in completion of the project with Mr. Healey stating when the City looked at the project and due to the traffic safety issue, the safety and best route for the City to take was to continue the contract based on correspondence from Construction Management and emphasized the rainy weather contributed to the delay. Extensive discussed ensued regarding the delay in the completion of the project. Construction Manager Banuelos explained several notices were given to the company and the main concern was safety, noting if the City defaulted the contractor, the City could not mobilize forces for several months. City Manager Souza stated his office was in concurrence with the decision and noted due process needed to take place and requested caution because of the possibility of litigation.

Councilmember Calhoun apologized to the people who traveled Herndon Avenue and expressed his unhappiness with the contractor. Acting President Perea stressed the importance of Council being notified of similar situations because Council could amend some policies to ensure similar situations do not happen in the future. Councilmember Westerlund recommended surveying other municipalities or entities to see what options they provide when a project comes into default.

City Manager Souza commended Construction Management for working on the project and stated for the record the project was handled in the proper way and the City followed due process.

Council President Duncan requested Council be kept informed of problems with contract and Mr. Souza stated staff had begun to reformat requests for service and was in the process of investigating a better way to structure the City's contracts.

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(9:30 A.M.) URBAN FOREST WORKSHOP - PRESENTATION TO COUNCIL AND DIRECTION TO STAFF

Public Works Director Healey gave an extensive review of the above listed item, noting the City had over 300,000 trees; reviewed the Master Tree Planting Plan; emergency tree service; Geo-Based Tree Program; trimming cycles; tree removal. He reviewed the City's procedure regarding a planted tree not approved by the City and requested Council consider allowing the City to maintain the tree if it falls within the City area. Mr. Healey continued with a review of the key issue standard specifications; key issues funding; education; clarification of what the program does, and noted the educational information would be provided on the City's website at a future date.

Council President Duncan introduced and welcomed students from Mountain View Elementary School.

Barbara Hunt, 2475 S. Walnut, thanked the City for the cards and condolences her family received on her mother's passing. Ms. Hunt stated the City should not have to carry the entire load of taking cares of trees and recommended including LOC, EOC and Fresno County jail inmates to maintain the City trees.

Beth Teveadale, President of the University California Gardeners Association, expressed concern with how the City trees are selected and maintained and stated the Association is currently working on a list of trees that are appropriate for planting in the area and offered their services to the City.

John Valentino, 541 E. Terrace, representing Tree Fresno, expressed their commitment in resolving the issues and challenges of the tree problems and emphasized trees improve people's life and the quality of air.

Acting President Perea questioned whether staff was going to maintain all trees within the City's easements and Mr. Healey stated if Council approved the request, it would eliminate a large amount of confusion. Discussion ensued regarding tree maintenance funding and the importance of the goal of a policy being created to trim trees every five years.

Councilmember Boyajian expressed concern with the lack of coordination of geo-based trees and also the removal of dead or nuisance trees with Mr. Healey stating an ordinance would be coming which would allow the City to maintain the tree from inception throughout its lifetime. Mr. Healey noted new developments within Community Facilities District No. 11 include a fee that would be used for the care and yearly trimming of each tree. Mr. Boyajian expressed concern with lack of a policy for tree trimming, planting the correct tree and repair of sidewalks, with Mr. Healey responding.

(3-0) Councilmember Dages reviewed problems relating to surface roots, not allowing the homeowner to trim the City tree on his own property, the planting of redwood trees, planting trees near a sewer line and the problems with property being annexed into the City. Councilmember Dages also noted the liability factor of the olive trees along Peach and Butler Avenues; expressed concern with residents submitting claims to Risk Management for damage done by City trees, and stated Risk Management denies the claim and recommends the trees be sprayed to stop the growth of olives and all prevent the filing of claims.

Extensive discussion ensued regarding trees in City easements, funding, the tree trimming cycle, and Councilmember Westerlund expressed concern regarding the inclusion of County islands being annexed to the City and the areas in front of the home that has a City easement, noting the addition would drop the geo-bases by 30 percent and elaborated.

Councilmember Calhoun stated the City would save money by not repairing sidewalks and requested a report on how much money the City would save by discontinuing sidewalk repair and suggested having the homeowner possibly paying for the repair of the sidewalk. Councilmember Calhoun stated the City was moving in the right direction with the policy of the funding being included in new developments; expressed concern with a newsletter he received from Tree Fresno and read a portion of an article relating to the negative way City trees were dealt with and advised of his resentment for the article.

Council President Duncan expressed concern with a 5-year tree trimming policy costing the City more money, the number of claim submitted due to City trees, and noted he would like to see a simpler process be developed relating to addressing a request to a tree problem. He requested a copy of the schedule showing the areas for geo-based trimming; stated for the record, there were several dead pine trees on Friant Road and requested City staff remove the dead trees and added he would personally purchase new trees for the City to re-plant.

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RECESS – 10:51 A.M. – 10:59 A.M.

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(10:30 A.M.) APPROVE RESOLUTIONS RELATING TO THE OFFICE OF INDEPENDENT POLICE AUDITOR (IPA)
1. RESOLUTION - SUBMITTING A PROPOSED CHARTER AMENDMENT TO CITY ELECTORS RELATING TO THE OFFICE OF INDEPENDENT POLICE AUDITOR
2. RESOLUTION - SUBMITTING AN ADVISORY MEASURE TO CITY ELECTORS RELATING TO THE OFFICE OF INDEPENDENT POLICE AUDITOR

Mayor Autry stated the above resolutions were an opportunity to strengthen the efficiency and effectiveness of the Fresno Police Department and community trust, stated the Police Auditor was an indispensable component of enhancing public safety and in other states the Auditor had found new and better ways to successfully serve the public. Mayor Autry concluded by stating people should be allowed to speak and deserve to be heard on the issue.

City Manager Souza stated an amendment to the language of the two resolutions listed above would be coming shortly which would replace the description of the office of the Independent Police Auditor and would read as follows: instead of reading *“Oversee Police Department investigations of complaints against Police Officers”* the language would be replaced with, *“To establish the Office of Independent Police Auditor to prepare an annual report to include recommendations regarding Fresno Police Department policies and procedures and to review investigations of complaints against Fresno Police Officers of the Fresno Police Department.”* Mr. Souza added the amendment would also be included in the advisory measure.

Mayor Autry stated he agreed with some of the criticism of the model brought forward earlier regarding Council not being involved in the selection of the Independent Police Auditor, and noted this model involved the City Manager bringing forth the potential hiree with confirmation from the City Council.

Speaking in support were: Fernando Gaeta, 2521, E Dakota Avenue; and Gloria Torrez, Fresno. CA. Speaking in opposition were: Chuck Riojas, 2947 N Arthur; Sheila Chandler, 994 N Van Ness, representing FPOA; James Bewley, President of the Fresno Deputy Sheriff’s Association, 1360 Van Ness; Reverend Floyd Harris, Jr., 1630 W. Kearney Blvd., who stated the Auditor should not be under the direction of the City Manager; Jacky Parks, FPOA President, 994 N. Van Ness Avenue, also opposed the current proposal being under the direction of the City Manager; Tony Farmer, 1312 W. Fremont Avenue, and Barbara Hunt, 2475 S. Walnut.

The amendment to the resolutions were distributed and City Attorney Montoy advised the advisory measure would allow the Mayor and Council to know what the voters would like and if the City pursued the measure, it would come back to the City Council in an ordinance form and the exception of the Charter amendment was that there would be no City Council approval of the appointment of the Police Auditor.

A motion of Councilmember Sterling to adopt the resolution, as amended, submitting a proposed Charter amendment to City electors relating to the Office of Independent Police Auditor died due to a lack of a second.

Councilmember Boyajian requested clarification of the two listed resolutions with Mr. Souza stating the resolution was a hybrid from San Jose and Sacramento, allowing the Council to approve the appointment of the Police Auditor.

Councilmember Boyajian stated, for the record, his past support in the hiring of an Independent Police Auditor but would only support the San Jose model, and reiterated his support for the Independent Police Auditor but not with the current process.

After brief discussion, a motion to adopt the advisory measure resolution, as amended was acted upon after extensive discussion.

Councilmember Boyajian stated Council had no authority in hiring and firing City employees and expressed the importance of submitting the proposal to the voters.

Councilmember Sterling stated the motion she made was an opportunity for the residents to vote and emphasized District 3 needed an Independent Police Auditor and requested an officer from the Police Department be with her when residents need to discuss police matters. Councilmember Sterling expressed concern with the November, 2005, election where there were frivolous measures to be voted upon and noted if the City was going to move forward, this was an opportunity for the citizens to have a chance to speak.

(5-0) Councilmember Westerlund stated it was his responsibility to not support the motion because there had been discussions at his district meetings with an overwhelming response against hiring an Independent Police Auditor.

Council President Duncan stated he had been prepared to support the advisory measure but without detailed content and having no substance he would vote against the measure.

A motion of Councilmember Sterling, seconded by Councilmember Boyajian, the resolution submitting an advisory measure to City Electors relating to the Office of Independent Police Auditor as amended to read "Shall the City establish the Office of Independent Police Auditor to oversee Fresno Police Department Investigations of complaints against Police Officers and to prepare an annual report to include recommendations regarding Fresno Police Department policies and procedures and to review investigations of complaints against Fresno Police Officers of the Fresno Police Department", failed by the following vote:

Ayes : Boyajian, Sterling,
Noes : Calhoun, Dages, Perea, Westerlund, Duncan
Absent : None

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LUNCH RECESS – 11:58 A.M. - 2:00 P.M. Councilmember Boyajian arrived shortly thereafter.

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(2:00 P.M.) CLOSED SESSION:

("A") CONFERENCE WITH LEGAL COUNSEL/EXISTING LITIGATION - CASE NAMES:

- 1. CITY OF FRESNO V. GARFIELD PARK HIGHLANDS, ET AL.**
- 2. COUNTY OF KERN V. CITY OF FRESNO (WEST COAST WASTE, INC., TULE RANCH/MAGAN RANCH, EARTHWISE ORGANICS, INC., REAL PARTIES IN INTEREST)**

("B") CONFERENCE WITH LABOR NEGOTIATOR:

CITY NEGOTIATOR: KENNETH PHILLIPS

EMPLOYEE ORGANIZATION: FRESNO POLICE OFFICERS ASSOCIATION (FPOA BASIC UNIT)

("C") CONFERENCE WITH LEGAL COUNSEL/ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION:
PAYNTER REALTY & INVESTMENTS, INC. V. CITY OF FRESNO

The City Council met in closed session in Room 2125 at the hour of 2:00 p.m. to consider the above matters and reconvened in regular open session at 3:02 p.m. After closed session, Councilmember Westerlund left for Washington and was absent for the remainder of the meeting.

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(3:00 P.M.) APPEARANCE BY DR. MORENO, DEPARTMENT OF COMMUNITY HEALTH, TO PROVIDE INFORMATION REGARDING THE AVIAN INFLUENZA

Dr. Moreno of the Department of Community Health gave an extensive overview of influenza. Dr. Morena reviewed three different influenzas: 1. Seasonal influenza, occurring every season affecting 5 to 25 % of people throughout the year with the best result of getting a flu vaccine; 2. epidemic flu which the virus changes from one season to the next; 3. Avian flu was a virus affecting birds and H5N1 is spreading across the globe and has a high mortality rate and noted the avian flu has not been known to date to pass from human to human. Dr. Moreno stated the virus does spread from birds to humans and the treatment is to receive anti-virals, and 4: Pandemic flu comes from the Avian flu which can last up to two years and is affected every couple of decades. Dr. Moreno reviewed the impact of the pandemic influenza and gave statistics of the impact as well as the economic impact.

Jerry Preda, Fresno County Agriculture Commissioner, stated the most likely place for Avian influenza to be found would be in a resident's backyard versus commercial locations and discussed locations of birds within the City of Fresno. Mr. Preda stated a process was in plan in case there was a bird disease epidemic, and stated the USDA has sampled over 117,000 commercial poultry for avian influenza with negative results. He stated in case of avian influenza showing positive in poultry, a declaration would be made immediately and stated a training session has been scheduled regarding the understanding of ag-terrorism on April 12, 2006, and encouraged Council contact his office if interested at 456-7510. Mr. Preda reviewed what residents should do to take care of backyard poultry and expressed the importance of contacting (Sickbird) 1-800-491-1899 or 1-909-947-4462 or the website address: www.cdfa.ca.gov if any situations arose.

Dr. Moreno reviewed several facts of what citizens can do to prevent the spread of influenza and stressed the importance of basic disaster preparedness for the pandemic influenza.

Brief discussion ensued regarding emergency preparedness within the City of Fresno with Fire Bureau Chief Aranaz stating the Fire Department has been working very closely with the County of Fresno and the Agriculture Department.

(6-0) Council President Duncan gave an example of a resident feeding an excessive amount of pigeons and questioned whether legal action could be taken if the influenza becomes a reality due to birds transferring the flu, and Ms. Montoy stated an emergency ordinance could be prepared and enacted.

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(3:30 P.M.) HEARING ON THE 2006 WEED ABATEMENT PROGRAM

1. BILL NO. B-25 - APPROVING THE PROCEDURES FOR THE 2006 WEED ABATEMENT PROGRAM, AND DECLARING THAT DRY GRASS, WEEDS, TRASH AND DEBRIS ON VACANT LOTS AND LOTS WITH VACANT STRUCTURES POSE A SIGNIFICANT FIRE HAZARD IN THE CITY OF FRESNO

Before conducting the hearing, City Manager Souza introduced newly hired Code Enforcement Manager Ruben Diaz.

President Duncan announced the time had arrived to consider the issue and opened the hearing.

Mr. Diaz briefly reviewed the staff report and recommended approval.

Upon call, no one wished to be heard and President Duncan closed the hearing.

Housing Program Supervisor Ross responded to questions relating to the removal of weeds being a year-round maintenance program and noted a surveillance team and communication line has been created to assist with the increased amount of illegal dumping.

On motion of Councilmember Calhoun, seconded by Councilmember Dages, duly carried, RESOLVED, the above entitled Bill No. B-25 introduced before the City Council and laid over, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Perea, Sterling, Duncan
Noes : None
Absent : Westerlund

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(3:45 P.M.) HEARING ON REZONE APPLICATION NO. R-05-110 AND ENVIRONMENTAL FINDINGS, FILED BY DAVID CHINN ON BEHALF OF K.J. WORLDWIDE INVESTMENTS, INC., PROPERTY LOCATED ON THE SOUTHERLY CORNER OF THE SAN BENITO AND "E" STREETS INTERSECTION

1. CONSIDER AND ADOPT E.A. NO. R-05-110, FINDING OF CONFORMITY TO THE GENERAL PLAN MEIR

2. **BILL NO. B-26 - ORDINANCE NO. 2006-25** - AMENDING THE OFFICIAL ZONE MAP TO REZONE THE SUBJECT PROPERTY FROM C-5 TO R-3

President Duncan announced the time had arrived to consider the issue and opened the hearing.

Planner Tackett briefly reviewed the staff report and recommended approval.

Upon call, no one wished to be heard and Council President Duncan closed the hearing.

On motion of Councilmember Sterling, seconded by Acting President Perea, duly carried, RESOLVED, the environmental finding of E.A. No. R-05-110 dated February 6, 2006, that the project proposal conforms to the provisions of the General Plan MEIR hereby approved, and the above entitled Bill No. B-26 adopted as Ordinance No. 2006-25, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Perea, Sterling, Duncan
Noes : None
Absent : Westerlund

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RECESS - 4:06 P.M. – 5:00 P.M.

(5:00 P.M.) HEARING ON REZONE APPLICATION NO. R-04-48, CONDITIONAL USE PERMIT (CUP) NO. C-04-126, AND ENVIRONMENTAL FINDINGS, FILED BY GARY VIGEN ON BEHALF OF JAMES MEDINA, PROPERTY LOCATED ON THE SOUTHEAST CORNER OF E. PRINCETON AVENUE AND N. VAN NESS BOULEVARD

1. CONSIDER AND ADOPT E.A. NO. R-04-48/C-04-126, FINDING OF CONFORMITY TO THE GENERAL PLAN MEIR

2. **RESOLUTION NO. 2006-89** - APPROVING CUP NO. C-04-126

3. **BILL NO. B-27 – ORINANCE NO. 2006-26** - AMENDING THE OFFICIAL ZONE MAP TO R EZONE FROM R-1 TO C-5/cz **(Planning Commission recommendation (AS AMENDED)**

4. **BILL** - AMENDING THE OFFICIAL ZONE MAP TO REZONE FROM R-1 TO C-5/cz **(Staff alternative)**

President Duncan announced the time had arrived to consider the issue and opened the hearing.

Supervising Planner Sanchez gave an extensive review of the staff report and history of the site. Mr. Sanchez reviewed two conditions of approval that differed from the Planning Commission recommendation regarding the total amount of vehicles allowed to park at any time and the Planning Commission recommendation of putting up a three to four foot wall approximately 25 to 30 feet from Van Ness to run parallel to Van Ness to screen the stored vehicles and staff's alternative was to recommend a three foot wall or fence or hedge with enhanced landscaping located closer to Van Ness to screen the vehicles. Mr. Sanchez briefly reviewed other conditions for the site and recommended approval of the environmental finding for the project and the Conditional Use Permit authorizing the use of a tires, batteries, accessory parts, sales and service store.

Speaking to the issue were: Melvin Kilner, 520 E. Terrace, spoke in favor of the business remaining at the site; applicant James Medina, owner of Van Ness Auto, stated he opened another shop in another area to relieve the traffic congestion, and

stated there was not a problem with a wall along Van Ness Avenue and requested approval of allowing a maximum amount of 15 vehicles during the day as well as 15 at night on the site and expressed concern with being allowed to inspect a vehicle outside; and Kimberly Mayhew, 5200 N Palm Avenue, #211, representing Mr. Medina.

City Attorney Montoy stated, for the record, her office recently received a letter, on file in the City Clerk's Office, alleging a conflict of interest with respect to a relationship between Mr. Medina and Planning Commission Member Vasquez and also between Mr. Vasquez and Acting President Perea and stated the City Attorney's Office followed up on both allegations and have been advised there was no relationship between the parties.

Continuing to speak to the issue were: Lloyd Evans, 2811 N. Van Ness, who stated he opposed the zoning and CUP change, but stated he was willing to accept the Planning and Development staff alternative recommendation; Leslie Davis, 2730 N Van Ness, stated the business needed to be self-contained, controlled, and the integrity of the neighborhood needed to be protected and recommended a fine be given if a violation occurs; Dan DeSantis, 2640 N Van Ness, who stated the owner has cleaned up the area and the business added a positive addition to the community and stated he received a letter from outside the district and expressed concern with the misinformation being provided; **(7-0)** Lea McAndrews, 1253 N. Linden, spoke in support of the business, but opposed the installation of the wall; Brad Polzin, 635 E Princeton, stated no one wanted to put Mr. Medina out of business but was concerned with ruining the neighbor's quality of life and stated Van Ness Auto has grown into an immense business and requested a limitation of vehicles and that all repairs be done inside the business. Mr. Polzin submitted a letter, on file in the City Clerk's Office; Karen Kuper, 635 E Princeton, stated she wanted the business to stay but comply with the law; Bruce Angle, 404 E Vassar, spoke in support of the alternative recommendations; Ozzie Erganian, 2810 N. Van Ness, who allowed Brad Polzin to use her time to present pictures of the area which Mr. Polzin provided a copy of the CD, on file in the City Clerk's Office; Mr. Spalding, 4938 N Van Ness, spoke in support of the business; James Oakes, 191 W Shaw, who stated this was a zoning and land use issue and the business was wrong for the location and expressed concern with the business violating the General Plan; Larry Roselle, 3444 E Simpson spoke in support of the business; Alex and Leslie Biedermann, 1275 N Wilson Avenue, former residents of 404 E Princeton spoke in support; Marc Davis, 4104 E Washington, spoke in support; Ben Young, 8610 N Cedar Avenue, Apt. 204, an employee at Mr. Medina's other business, spoke in support of the business; Roger Taylor, 4557 E Pico Avenue, requesting clarification of the total amount of cars on site with Mr. Sanchez responding and recommended giving the business a three-month probation period to see if the business would stay in compliance.

Upon call, no one else wished to be heard and President Duncan closed the hearing.

Councilmember Sterling left at 6:07 p.m. for the remainder of the meeting. Councilmember Boyajian stated the integrity of Van Ness Blvd. was very important and reviewed the history of the prior owner and how the area was blighted at one time and stated when Mr. Medina bought the property, he tried to mitigate the traffic congestion by purchasing another business. Mr. Boyajian noted his office has received complaints from residents regarding Java Wava, Victor's Pizza and the First Congregational Church causing traffic problems. Mr. Boyajian stated he disagreed with the installation of a wall in the front of the building due to the building being historic, but stated a fence around the building would be fine and felt the issues have been mitigated. Mr. Boyajian questioned Mr. Medina as to the importance of having fifteen vehicles on his property at one time instead of ten with Mr. Medina responding. Discussion ensued regarding tow trucks not delivering throughout the night.

(8-0) Planning and Development Director Yovino reiterated Planning Commission approved no more than fifteen vehicles at any time on the site and staff's recommendation was to allow ten vehicles. Mr. Yovino reviewed the planning history and clarified the Tower District Specific Plan and the General Plan. Mr. Yovino stated the main issue was staff was recommending a total of 10 vehicles parked at the business at any time versus Mr. Medina's request of fifteen vehicles.

A motion to approve the Planning Commission recommendation, as amended was voted upon after brief discussion.

Councilmember Calhoun stated he has driven on Van Ness frequently and had noticed the traffic congestion and if the motion passes, the owner needed to recognize that Code Enforcement would be involved if a violation occurred.

On motion of Councilmember Boyajian, seconded by Council President Duncan, duly carried, **RESOLVED**, the environmental finding for E.A. No. R-04-48/C-04-126 dated August 31, 2005, that the project proposal conforms to the provisions of the General Plan MEIR hereby approved, the above entitled Resolution No. 2006-89 hereby adopted, and the above entitled Bill

No. B-27 as recommended by the Planning Commission adopted as Ordinance No. 2006-26, as amended to allow a total of fifteen vehicle on the site during business hours and fifteen vehicles stored overnight, by the following vote:

Ayes : Boyajian, Dages, Perea, Duncan
Noes : Calhoun
Absent : Sterling, Westerlund

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ADJOURNMENT

There being no further business to bring before the City Council, the hour of 6:30 p.m. having arrived and hearing no objections, President Duncan declared the meeting adjourned.

Approved on the _____ day of _____, 2006.

Jerry Duncan, Council President

ATTEST: _____
Cindy Bruer, Deputy City Clerk

